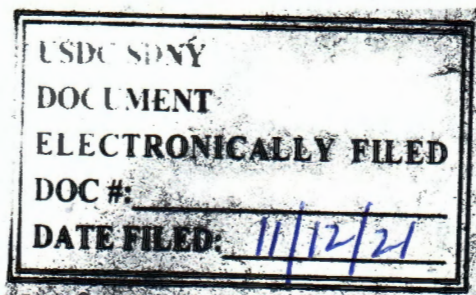


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Kelley
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MEMO ENDORSED



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November 2, 2021

Via ECF

Hon. Louis L. Stanton, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

*Pre-motion conference held.
Objection over. Sano
deposition to be resumed.*

Louis L. Stanton

11/12/21

Re: *FTC, et al. v. Quincy Bioscience Holding Co., Inc., et al.*
Case No. 1:17-cv-00124-LLS

Your Honor:

We represent Defendants in this action. Pursuant to Local Rule 37.2 and Section 2.A. of Your Honor's Individual Practice Rules, we write to request a pre-motion conference to discuss Defendant's anticipated motion to compel further deposition testimony from Plaintiffs' expert witness, Dr. Mary Sano. Specifically, Defendants seek to compel Dr. Sano to identify the portion of the Federal Trade Commission's Dietary Supplements: An Advertising Guide For Industry ("FTC Guidance" available at <https://www.ftc.gov/tips-advice/business-center/guidance/dietary-supplements-advertising-guide-industry>) she reviewed on the day prior to her deposition and to compel Dr. Sano to respond to deposition questions with respect to the FTC Guidance.

During initial questioning by Defendants' counsel at her deposition on October 22, 2021, Dr. Sano repeatedly testified that she had not reviewed the FTC Guidance, which was marked as an exhibit at her deposition. (See, e.g., Ex. A at 34:20-35:4; 35:13-22; 36:8-12.) After Defendants concluded their initial questioning of Dr. Sano and following a nearly hour-long break, Dr. Sano abruptly changed her testimony when questioned by counsel for the FTC. The FTC's counsel asked Dr. Sano whether she "would like to modify [her] answer, that [she] gave previously" concerning whether she had seen the FTC Guidance (*Id.* at 258:18-259:6; 263:19-264:6.) She testified that she did wish to modify her testimony. (*Id.* at 263:25-264:7.) Next, the FTC's counsel asked Dr. Sano whether she had "seen [the FTC Guidance] prior to today[.]" (*Id.* at 264:18-19.) Dr. Sano then testified—in contrast to the position she had taken when questioned by Defendants' counsel—that she had "not seen the whole document" but "would clarify and say that [she's] seen a paragraph from the document" on the day prior to her deposition. (*Id.* at 264:20-22.)

Defendants' counsel then asked Dr. Sano some follow up questions about which paragraph she reviewed from the FTC Guidance, but the FTC's counsel objected on the grounds of attorney work product, and instructed Dr. Sano not to answer Defendants' counsel's question. (*Id.* at 266:15-23.)

November 2, 2021

Plaintiffs' position finds no support in the law. The identity of the paragraph of the FTC Guidance that Dr. Sano reviewed on the day before her deposition is simply not attorney work product. Defendants did not—and do not intend to—ask Dr. Sano questions that would require her to divulge conversations that she had with Plaintiffs' counsel. Defendants are, however, entitled to know which paragraph she reviewed. It is clear that Plaintiffs' counsel agrees on this point, as they permitted their other expert witnesses to answer questions identifying the documents they reviewed in preparation for their depositions, and insisted that one of Defendants' expert witnesses identify documents that he reviewed in advance of his deposition. In fact, to the extent Dr. Sano considered this paragraph in connection with her opinion in this action, Plaintiffs were required to disclose such materials under the Federal Rules of Civil Procedure, but have failed to do so.¹ (See Fed. R. Civ. P. 26(a)(2) (parties' expert must provide "the facts or data considered by the witness in forming" his or her opinion.)

This issue is critical because none of Plaintiffs' experts were able to testify that the scientific evidence, including the results of Quincy Bioscience's clinical trials, failed to meet the FTC's own standard for substantiation ("competent and reliable scientific evidence"), as set forth in applicable case law and the FTC Guidance. Indeed, none of Plaintiffs' experts had even reviewed the FTC Guidance prior to rendering the opinions contained in their respective reports. It was only after Defendants had finished questioning all of the Plaintiffs' experts that Dr. Sano suddenly had the epiphany (which appeared nowhere in either of her reports) that she had reviewed one paragraph of the FTC Guidance on the day prior to her deposition.

Accordingly, Defendants request a pre-motion conference to discuss their anticipated motion to compel or, in the alternative, request an Order directing Plaintiffs to identify the portion of the FTC Guidance that Dr. Sano reviewed the day before her deposition. Defendants also request an Order directing Plaintiffs to make Dr. Sano available for questioning under oath, at Defendants' discretion, with respect to the FTC Guidance. Defendants specifically left Dr. Sano's deposition open and, at that time, there was approximately 52 minutes remaining for Defendants' questioning on the record.

Respectfully submitted,

/s/ Geoffrey W. Castello

Geoffrey W. Castello

/s/ Michael B. de Leeuw

Michael B. de Leeuw

¹ Dr. Sano did not cite, nor did she refer to, the FTC Guidance in either her affirmative report or her rebuttal report.

Exhibit A

1 Sano - rough draft

2 THE VIDEOGRAPHER: Good morning,
3 counsel. My name is Phil Rizzuti. I am a
4 legal videographer in association with
5 TSG Reporting, Inc.

6 Due to the severity of the COVID-19
7 and following the practice of social
8 distancing, I will not be in the same room
9 with the witness. Instead, I will record
10 this videotaped deposition remotely.

11 The reporter, Jeffrey Benz, also will
12 not be in the same room and will swear the
13 witness remotely.

14 Do all parties stipulate to the
15 validity of this video recording, and
16 remote swearing, and that it will be
17 admissible in the courtroom as if it had
18 been taken following Rule 30 of the Federal
19 Rules of Civil Procedure and the state's
20 rules where this case is pending?

21 MS. METZINGER: Yes for the Quincy
22 corporate defendants.

23 MR. GLENNON: Yes for the FTC.

24 THE VIDEOGRAPHER: Thank you.

25 MS. MATUSCHAK: Yes for the New York

<p style="text-align: right;">Page 2</p> <p>1 Sano - rough draft</p> <p>2 State Attorney General's office.</p> <p>3 THE VIDEOGRAPHER: Thank you.</p> <p>4 This is the start of media labeled</p> <p>5 Number 1 of the video-recorded deposition</p> <p>6 of Dr. Mary Sano, in the matter of the</p> <p>7 Federal Trade Commission and the People of</p> <p>8 the State of New York, by Letitia James,</p> <p>9 Attorney General of the State of New York,</p> <p>10 versus Quincy Bioscience Holding Company,</p> <p>11 Inc., a corporation, et al., in the United</p> <p>12 States District Court for the Southern</p> <p>13 District of New York,</p> <p>14 Case Number 117 CV 00124 LLS.</p> <p>15 This deposition is being held on</p> <p>16 October 22, 2021, at approximately</p> <p>17 10:01 a.m.</p> <p>18 My name is Phil Rizzuti. I am the</p> <p>19 legal video specialist from TSG Reporting,</p> <p>20 Inc. The court reporter is Jeffrey Benz in</p> <p>21 association with TSG Reporting. Counsel</p> <p>22 please introduce yourself.</p> <p>23 MS. METZINGER: Good morning. Jaclyn</p> <p>24 Metzinger from Kelley Drye & Warren for the</p> <p>25 Quincy corporate defendants. And I have</p>	<p style="text-align: right;">Page 3</p> <p>1 Sano - rough draft</p> <p>2 with me today my colleagues, Geoffrey</p> <p>3 Castello, Glenn Graham, and Lauren</p> <p>4 Margolies.</p> <p>5 MR. DE LEEUW: Michael de Leeuw on</p> <p>6 behalf of Mark Underwood. I have with me</p> <p>7 today Tamar Wise.</p> <p>8 MR. GLENNON: This is Edward Glennon</p> <p>9 for the Federal Trade Commission. Also</p> <p>10 participating for the FTC are attorneys</p> <p>11 Andrew Warren and Annette Soberats and</p> <p>12 investigator Will Ducklow.</p> <p>13 MS. MATUSCHAK: This is Kate</p> <p>14 Matuschak, and I'm here for the New York</p> <p>15 State Attorney General's office.</p> <p>16 THE VIDEOGRAPHER: Thank you.</p> <p>17 Will the court reporter please swear</p> <p>18 in the witness.</p> <p>19 DR. MARY SANO,</p> <p>20 called as a witness, having been first</p> <p>21 duly sworn by Jeffrey Benz, a Notary</p> <p>22 Public within and for the State of New</p> <p>23 York, was examined and testified as</p> <p>24 follows:</p> <p>25 EXAMINATION BY MS. METZINGER:</p>
<p style="text-align: right;">Page 4</p> <p>1 Sano - rough draft</p> <p>2 Q. Good morning, Dr. Sano. We met</p> <p>3 briefly before we got on the record, but again,</p> <p>4 my name is Jaclyn Metzinger. And I represent</p> <p>5 the Quincy corporate defendants -- excuse me --</p> <p>6 in this matter.</p> <p>7 Have you been deposed before,</p> <p>8 Dr. Sano?</p> <p>9 A. I have.</p> <p>10 Q. How many times have you been deposed?</p> <p>11 A. I'm not sure. It's been many years.</p> <p>12 Q. Would you say less than five times?</p> <p>13 A. Maybe between five and ten times.</p> <p>14 Q. And have those depositions been given</p> <p>15 in your professional capacity or personal</p> <p>16 capacity?</p> <p>17 A. They have.</p> <p>18 Q. Were you designated as an expert</p> <p>19 witness in any of the matters in which you gave</p> <p>20 a deposition?</p> <p>21 A. I was.</p> <p>22 Q. In all of them?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall any of the names of</p> <p>25 the cases in which you gave your deposition?</p>	<p style="text-align: right;">Page 5</p> <p>1 Sano - rough draft</p> <p>2 A. I do not.</p> <p>3 Q. Do you recall whether you were</p> <p>4 retained as an expert on behalf of the plaintiff</p> <p>5 or the defendant in those cases?</p> <p>6 A. I had -- on both.</p> <p>7 Q. Have you ever been retained as an</p> <p>8 expert witness by the Federal Trade Commission</p> <p>9 in a prior matter?</p> <p>10 A. I have not.</p> <p>11 Q. Have you ever been retained as an</p> <p>12 expert witness by the New York Attorney</p> <p>13 General's office?</p> <p>14 A. I have not.</p> <p>15 Q. Have you ever been retained as an</p> <p>16 expert witness by any other governmental agency?</p> <p>17 A. I think I have. By the U.S. Attorney</p> <p>18 General.</p> <p>19 Q. Do you recall what that matter</p> <p>20 involved?</p> <p>21 A. I don't recall.</p> <p>22 Q. Have any of the matters in which</p> <p>23 you've been retained as an expert witness</p> <p>24 involved a dietary supplement product?</p> <p>25 A. They have not.</p>

Page 34

1 Sano - rough draft
2 "competent and reliable scientific evidence,"
3 has been incorporated into any state or federal
4 law?
5 MR. GLENNON: Objection. Outside the
6 scope of the witness's expert report in
7 this matter.
8 You can answer, Dr. Sano.
9 A. Okay. Yeah. I -- I don't know.
10 I've not looked at the law so...
11 Q. Okay. And do you agree that Prevagen
12 is a dietary supplement?
13 A. I don't know how it's -- what -- how
14 it identifies itself. I don't know that it's
15 specific dietary supplement medical food, et
16 cetera.
17 Q. It's not a drug, though, correct?
18 A. I don't know that it markets itself as
19 a drug or that it is a drug.
20 Q. Are you familiar with the document
21 titled "Dietary Supplements and Advertising
22 Guide for Industry"?
23 A. I am not.
24 Q. You've never reviewed the -- I'm going
25 to refer to this document as the FTC guidance.

Page 36

1 Sano - rough draft
2 A. I'm not making any statements about
3 the marketing claims.
4 Q. Are you aware that the FTC guidance
5 has its own definition of "competent and
6 reliable scientific evidence"?
7 A. I'm not aware.
8 Q. Is there any reason why you chose not
9 to review the FTC guidance after seeing
10 references to it in Quincy's experts' reports?
11 A. It wasn't part of the work I was
12 engaged to do.
13 Q. And can you explain to me exactly what
14 your assignment was in this case?
15 A. It was --
16 MR. GLENNON: Excuse me, sorry.
17 Sorry, could you read -- I didn't hear the
18 question. Could you please -- could the
19 court reporter read it back, please.
20 (The record was read back.)
21 MR. GLENNON: Thank you.
22 A. I believe it's as stated as in the
23 report. I was reviewing the -- the material
24 that was provided to me to determine if it was
25 coming to conclusions that one would expect,

Page 35

1 Sano - rough draft
2 You've never reviewed the FTC guidance before?
3 A. I do not -- I don't recall that I
4 have.
5 Q. And do you recall seeing references to
6 the FTC guidance in the expert reports that
7 are -- have been submitted by Quincy?
8 A. I believe there was references to the
9 guidance.
10 Q. And --
11 A. In -- I would need a review to see
12 exactly what was said there.
13 Q. And after seeing references to the FTC
14 guidance in Quincy's expert reports, you did not
15 then go and review the FTC guidance?
16 A. No, I did not.
17 Q. So you're not offering an opinion
18 today rebutting anything that Quincy's experts
19 had said with respect to the FTC guidance?
20 A. I don't believe I am. My -- my
21 commentary is based on the work that I reviewed,
22 the primary works that I reviewed.
23 Q. And are you offering an opinion that
24 the marketing claims for Prevagen comply with
25 the FTC guidance?

Page 37

1 Sano - rough draft
2 given the standards of how that data is
3 collected.
4 Q. And that standard is your definition
5 of "competent and reliable scientific evidence";
6 is that correct?
7 MR. GLENNON: Objection.
8 A. Yes. My standard is the standards of
9 the material in the field -- of the expectations
10 in the field.
11 Q. Did you draft that phrase, "competent
12 and reliable scientific evidence"? Did you come
13 up with that phrase for your report?
14 A. I believe I did. I edited -- I
15 created the first version of the report, and I
16 believe it was in there, but I'm not -- I'm not
17 sure.
18 It may have -- the words may have
19 occurred separately. I don't remember the
20 versions.
21 Q. And -- but you said that you don't
22 recall seeing that exact phrase prior to
23 being -- working in this case. Is that correct?
24 A. Can you ask the question again?
25 Q. Sure. I believe you testified earlier

Page 258

1 Sano - rough draft

2 MR. GLENNON: Objection.

3 A. What people know. Marketing claims.

4 Q. And you're not qualified to offer an

5 opinion on whether a marketing claim is

6 adequately substantiated. Is that correct?

7 MR. GLENNON: Objection.

8 A. I don't know about marketing claims.

9 I know about claims about cognition

10 and memory.

11 MS. METZINGER: I don't have any

12 further questions. Thank you for your

13 time, Dr. Sano.

14 THE VIDEOGRAPHER: Is that it? Anyone

15 else?

16 MR. DE LEEUW: Nothing for Mark

17 Underwood.

18 MR. GLENNON: Okay, this is Ed Glennon

19 for FTC. I would like to take a break. We

20 might have some clarifications questions

21 for -- or cross, rather.

22 THE VIDEOGRAPHER: Okay.

23 MR. GLENNON: Can we go off the

24 record.

25 THE VIDEOGRAPHER: The time is

Page 260

1 Sano - rough draft

2 Q. Do you still agree with that statement

3 in your report?

4 A. I do.

5 Q. Okay.

6 A. Yes.

7 Q. Okay. And could you -- take a look at

8 the rest of that paragraph, there.

9 A. Uh-huh. Yes.

10 Q. Paragraph 13. Do you still stand by

11 the other statements made in paragraph 13?

12 A. I do.

13 Q. Okay.

14 Do you consider yourself to be an

15 expert in the field of memory?

16 A. Yes. I do.

17 Q. Okay. Did you consider standards in

18 that field of memory when opining on what

19 constitutes competent or reliability scientific

20 evidence in this case?

21 A. I did. Yes.

22 Q. Okay.

23 Do you consider yourself to be an

24 expert in the field of cognition?

25 A. Yes.

Page 259

1 Sano - rough draft

2 6:38 p.m. and we are going off the record.

3 (A recess was taken from 6:38 to

4 time .)

5 THE VIDEOGRAPHER: The time is

6 7:28 p.m. and we are back on the record.

7 EXAMINATION BY MR. GLENNON:

8 Q. Hi, Dr. Sano.

9 So, earlier, today, you were asked

10 about clinical meaningfulness with regard to the

11 Madison Memory Study. Do you remember that?

12 A. I do.

13 Q. Okay.

14 And paragraph 13 of your rebuttal

15 report, which is Exhibit 2, can I direct you to

16 that paragraph, please?

17 A. Okay. I'm there.

18 Q. Okay.

19 So, for the record, the first sentence

20 of that paragraph reads, finally with regard to

21 the results of the Madison Memory Study I see no

22 evidence that any purported improvements on the

23 cog state tasks would be clinically meaningful.

24 Do you see that statement?

25 A. I do.

Page 261

1 Sano - rough draft

2 Q. Did you consider standards in that

3 field when opining on what constitutes competent

4 and reliable scientific evidence, in this case?

5 A. Yes, I did.

6 MR. DE LEEUW: Objection to the form

7 of the question. W sorry.

8 Q. Okay. You can answer it Dr. Sano.

9 A. Yes, I did.

10 Q. Do you consider yourself to be an

11 expert in the field of cognitive impairment?

12 A. I do. Yes.

13 Q. Did you consider standards in that

14 field when appointing on what constitutes

15 competent and reliable scientific evidence, in

16 this case?

17 A. I did.

18 MR. DE LEEUW: Objection to form.

19 Q. What was your answer, Dr. Sano?

20 A. Yes, I did.

21 Q. Okay.

22 And do you -- yourself to be an expert

23 in the field of neuro psychology?

24 A. Yes, I do.

25 Q. And did you consider standards in that

Page 262

1 Sano - rough draft
2 field when opining on what constitutes competent
3 and reliable scientific evidence, in this case?
4 MR. DE LEEUW: Objection to the form
5 of the question.
6 A. Yes, I did.
7 Q. Okay.
8 And do you consider yourself to be an
9 experts notice field of neuroscience of aging
10 and dementia?
11 A. Yes, I'm an expert in those areas.
12 Q. Okay. Did you consider standards in
13 those feels when opining on what constitutes
14 competent and reliable scientific evidence, in
15 this case?
16 MR. DE LEEUW: Object to the form of
17 the question.
18 A. Yes, I did.
19 Q. Okay.
20 Now, you've testified earlier today,
21 also about the protocol, and standards, for
22 standards in the field of clinical trials, for
23 reporting elements of a protocol. Do you
24 remember that?
25 A. I do.

Page 264

1 Sano - rough draft
2 whether you had seen that document, prior to
3 today?
4 A. Yes, I was asked that.
5 Q. Okay. A would you like to modify your
6 answer, that you gave previously?
7 A. Yeah. Yes. Thank you. I --
8 MS. METZINGER: Objection. Hold on,
9 Dr. Sano. I'm going to place an objection
10 to that question.
11 THE WITNESS: I'm sorry.
12 Okay.
13 A. I didn't hear what you said, it broke
14 up. So where do we --
15 MR. DE LEEUW: We were both note be
16 our objections.
17 A. Okay.
18 Q. Have you seen that document prior to
19 today?
20 A. I have not seen the whole document. I
21 would clarify and say that I've seen a paragraph
22 from the document.
23 Q. Okay. I have no --
24 A. I -- I saw the paragraph, I did not
25 receive the document.

Page 263

1 Sano - rough draft
2 Q. Did you consider the protocol of the
3 Madison Memory Study in determining whether the
4 analyses of the AD8 zero to 1 and zero to 2 sub
5 groups were post hoc?
6 MR. DE LEEUW: Objection to the form
7 of the question. Leading.
8 A. I did. Consider it. The protocol
9 didn't mention them. And I considered them to
10 be after the protocol was developed.
11 Q. Have you stated in your report, that
12 the protocol does not refer to the subgroup
13 analyses?
14 MR. DE LEEUW: Object to the form.
15 A. I -- stated in the report that
16 there's -- that there was no description of
17 those subgroups in the protocol.
18 Q. Okay.
19 Okay. And I will refer you to the
20 document that was marked earlier today as
21 Exhibit 3.
22 Do you see that?
23 Do you see it?
24 A. I do see it, yes.
25 Q. Okay. And were you asked about

Page 265

1 Sano - rough draft
2 MR. GLENNON: Okay. I have no further
3 questions.
4 MS. METZINGER: We're going to have to
5 take another break. Can we take five
6 minutes, please.
7 THE VIDEOGRAPHER: The time is
8 7:34 p.m., and we are going off the record.
9 (A recess was taken from 7:34 to
10 7:39.)
11 THE VIDEOGRAPHER: The time is
12 7:39 p.m. and we are back on the record.
13 EXAMINATION BY MS. METZINGER:
14 Q. Dr. Sano, did you speak with any other
15 experts in the field of memory to determine
16 whether they agree with the opinions set forth
17 in your report?
18 A. Did not.
19 Q. Did you speak with any other experts
20 in the field of cognition to determine whether
21 they agreed with the opinions expressed in your
22 reports?
23 A. I did not.
24 Q. Did you speak with any experts in the
25 field of cognitive impairment to determine

Page 266

1 Sano - rough draft

2 whether they agreed with the opinions expressed

3 in your reports?

4 A. I did not.

5 Q. Did you speak with any other experts

6 in the field of neuropsychology to determine

7 whether they agree with the opinions expressed

8 in your report?

9 A. I did not.

10 Q. Did you speak with any experts in the

11 field of neurosciences of aging and dementia, to

12 determine whether they agreed with the opinions

13 expressed in your report?

14 A. I did not.

15 Q. I would like to draw your attention

16 back to Exhibit 3, please.

17 A. To Exhibit 3, is that what you said?

18 DIR Q. Yes.

19 Which paragraph in this document have

20 you seen before today?

21 MR. GLENNON: I'll object. On the

22 basis of work product, and instruct the

23 witness not to answer that.

24 Q. Are you --

25 MR. DE LEEUW: She assessed, just want

Page 268

1 Sano - rough draft

2 Q. Did counsel remind you, over a break,

3 that he had shown you this paragraph yesterday

4 in preparation for today's deposition?

5 A. I don't recall whether or not counsel

6 reminded me or I recalled it as we were meeting.

7 Q. Did you have that recollection during

8 a conversation with counsel over the break?

9 A. Did I -- I did have the recollection.

10 Over the --

11 Q. While you were speaking with counsel

12 over a break?

13 A. I did.

14 Q. Dr. Sano, did you see the unidentified

15 referenced paragraph, prior to submitting either

16 of your reports in this case?

17 A. Never.

18 MS. METZINGER: And Mr. Glennon, I

19 just wanted to confirm that you're

20 directing Dr. Sano not to identify which

21 paragraph of the dietary supplement

22 guidelines that she has reviewed prior to

23 today, are you instruct her not answer?

24 MR. GLENNON: Yes, I am.

25 MS. METZINGER: Okay. Then we're

Page 267

1 Sano - rough draft

2 to respond to the objection she testified

3 that she saw one paragraph. I think --

4 we're then allowed to ask her which

5 paragraph that was. You can say that --

6 you can certainly -- you know interpose an

7 objection about any discussion you had

8 about it but she specifically testified

9 that she reviewed a paragraph. And

10 therefore we're entitled to find out what

11 that was.

12 MR. GLENNON: I disagree.

13 Q. Dr. Sano when did you see this

14 unidentified paragraph from Exhibit 3?

15 A. Yesterday.

16 Q. Was that the first time that you saw

17 this -- this paragraph from the unidentified

18 Exhibit 3?

19 A. It is.

20 Q. And is that why it's not listed in

21 your report?

22 A. That's correct.

23 Q. Either your reports?

24 A. That's correct.

25 MR. GLENNON: Objection.

Page 269

1 Sano - rough draft

2 going to have to leave Dr. Sano's

3 deposition open because we're going to go

4 to seek a ruling from Judge Stanton on that

5 point. The despite of -- a fair amount of

6 this deposition today, has been based on

7 the fantastic that Dr. Sano testified that

8 she had never seen the FTC dietary

9 supplement guide prior to today's

10 deposition. And we're going to reserve the

11 right to question Dr. Sano about that

12 paragraph, and any other paragraphs from

13 the dietary supplement guidance that we see

14 fit.

15 A. So can I make a comment.

16 MR. GLENNON: Hole on. I understand

17 your position, Jaclyn, I disagree with it,

18 I don't believe you're entitled to keep the

19 deposition open. I think -- which

20 paragraph she reviewed, is -- which -- the

21 that we reviewed with her is privileged so

22 yes that's the basis of my instruction.

23 And I -- ask the witness not to --

24 MS. METZINGER: I will disagree with

25 that, and I will remind you that during